Case Name and Number: *TransUnion LLC* v. *Ramirez*, No. 20-297

Introduction: Today, the Supreme Court in a 5-4 decision reversed a class-wide judgment, holding that the vast majority of class members failed to satisfy the injury-in-fact requirement for Article III standing to sue because they did not suffer a concrete harm resulting from the defendant's statutory violations.

Background: Plaintiff Sergio Ramirez sued TransUnion on behalf of a class of 8,185 individuals alleging violations of the Fair Credit Reporting Act (FCRA), which regulates consumer reporting agencies that compile and disseminate personal information about consumers. The class asserted two categories of claims. First, it claimed that TransUnion failed to use reasonable procedures to ensure the accuracy of class members' credit files, which contained alerts that the member was a "potential match" to a name on a list of terrorists and other criminals maintained by the Treasury Department. Second, it claimed that the formatting of the mailings TransUnion used to inform members about the potential match violated FCRA.

Ramirez, the sole named plaintiff, found out about the potential match while attempting to purchase a car, causing him to suffer difficulty in obtaining an auto loan and embarrassment in front of his family, and to cancel a planned vacation out of concern about the alert. But none of the other class members submitted any evidence of this kind, and the evidence showed that only 1,853 of the 8,185 had their credit reports disseminated to potential creditors.

The district court certified the class and ruled that each member of the class had Article III standing for both FCRA claims. After a trial, the jury returned a verdict in favor of the class and the district court entered a class-wide judgment. The Ninth Circuit affirmed in relevant part, holding that all members of the class had Article III standing to recover damages for the alleged FCRA violations. The Ninth Circuit also concluded that Ramirez's claims were typical of the class's claims for purposes of satisfying Federal Rule of Civil Procedure 23(a)(3).

Issue: Whether either Article III or Rule 23 permits a damages class action where the vast majority of the class suffered no actual injury, let alone an injury anything like what the class representative suffered.

Court's Holding: In an opinion written by Justice Kavanaugh and joined by Chief Justice Roberts and Justices Alito, Gorsuch, and Barrett, the Supreme Court reversed the Ninth Circuit's judgment.

The Court began with principles of Article III standing. Building on its prior opinion in *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016), the Court held that in order to satisfy Article III's requirement of injury in fact, a plaintiff must establish a concrete harm. And the Court reaffirmed that the requirement to establish concrete harm is not relaxed in the context of statutory violations. As the Court emphasized, "an injury in law is not an injury in fact." Instead, only "those plaintiffs who have been *concretely harmed* by a defendant's statutory violation may sue that private defendant over that violation in federal court." To determine whether the concrete-harm requirement is satisfied, the Court instructed (quoting *Spokeo*) that courts should "assess whether the alleged injury to the plaintiff has a 'close relationship' to a harm 'traditionally' recognized as providing a basis for a lawsuit in American courts."

Applying those principles, the Court first made clear that every class member has to have Article III standing in order to recover damages. For the reasonable-procedures claim, the Court held that the 6,332 class members whose credit reports were not disseminated to third parties lacked standing, because in the absence of dissemination they could not point to any concrete harm resulting from the alert in their credit files. The Court also rejected the argument that those individuals were at risk of future harm, noting that the class members were bringing retrospective damages claims; they did not show harm from the threat of future harm (such as incurring expenses to prevent the realization of that threat); and the risk of future dissemination was too speculative in any event.. By contrast, the Court held that the remaining 1,853 class members whose credit reports were disseminated did have standing, concluding that the harm of being labeled to third parties as a potential terrorist sufficiently resembled the harm associated with the common-law tort of defamation.

For the second category of claims, about the format of TransUnion's mailings, the Court concluded that only Ramirez had standing. The Court explained that the class members did "not demonstrate that they suffered any harm *at all* from the formatting violations," much less a "harm with a close relationship to a harm traditionally recognized as providing a basis for a lawsuit." The Court also rejected the argument that an alleged deprivation of information, without more, could constitute an injury in fact; instead, "[a]n 'asserted informational injury that causes no adverse effects cannot satisfy Article III.'"

In light of its holding on Article III standing, the Court declined to address the Rule 23 typicality issue and remanded the case to the Ninth Circuit, including to address whether class certification is appropriate.

Justice Thomas authored the principal dissent, in which Justices Breyer, Sotomayor, and Kagan joined, explaining his view that a violation of a private right of action created by Congress on its own should suffice to establish an Article III injury in fact.

Justice Kagan authored a brief dissent, in which Justices Breyer and Sotomayor joined, taking a slightly different view than Justice Thomas, saying that Article III requires a concrete harm even in the context of a statutory violation, but that in practice Congress's creation of a right would satisfy the concrete-harm standard in almost all cases.

Mayer Brown filed an *amicus* brief in support of TransUnion on behalf of the Chamber of Commerce of the United States of America and the National Federation of Independent Business.

Read the opinion here.